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IN THE
COURT OF APPEALS OF INDIANA

BROWN FLYING SCHOOL, INC., and STEVE BROWN,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 84A05-0903-CV-148
TERRE HAUTE INTERNATIONAL AIRPORT AUTHORITY, JOHN VAN ETTEN, DARRELL HEWITT, MOSE KASSIS, JERRY DAVIS, RONALD DANIELSON, and MIKE SHORT, solely in their capacity as BOARD MEMBERS,	)	
Appellees-Defendants.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael H. Eldred, Judge
Cause No. 84D01-0605-PL-3273

August 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Brown Flying School, Inc. and Steve Brown (collectively "Brown") appeal the trial court's dismissal of their complaint against the Terre Haute International Airport Authority and its six board members (collectively "the Airport Authority"). We affirm.

Issue

The dispositive issue we address is whether Brown had standing to file the complaint against the Airport Authority.

Facts

The allegations of Brown's complaint are that Brown has operated a flight school in Vigo County for a number of years. The flight lessons take place at a private airport. In 2000, the Airport Authority began operating its own flight school at its Hulman Field facility in Vigo County. It has purchased sixteen airplanes and employs flight instructors and mechanics, at a cost of about $424,000 annually in taxpayer money.

On May 1, 2006, Brown, unhappy that the government was operating a business that competed directly with his, filed a "Complaint for Declaratory Judgment and Permanent Injunction" against the Airport Authority. App. p. 5. On April 30, 2008, the trial court dismissed this complaint on the basis that "the Court is not sure exactly what the Plaintiff's complaint alleges (other than an obvious desire to remove the Defendant as

a flight school competitor)." Id. at 17. On May 9, 2008, Brown filed an "Amended Complaint for Declaratory Judgment and Quo Warranto." Id. at 19. The complaint specified that Brown was proceeding "pursuant to I.C. § 34-17 et al."[1] Id. Brown alleged that the statute governing the powers of local airport authorities, Indiana Code Section 8-22-3-11, did not authorize the Airport Authority to operate a flight school. As relief, Brown sought an injunction prohibiting the Airport Authority from owning airplanes and operating a flight school.

The Airport Authority moved to dismiss the amended complaint on the bases that Brown lacked standing, and that the statute at issue did authorize it to operate a flight school. On November 12, 2008, the trial court dismissed Brown's amended complaint. It stated that although Brown had standing, the statute authorized the Airport Authority's operation of a flight school. Brown now appeals.

Analysis

On appeal, the Airport Authority reiterates its argument that Brown lacked standing. "We will affirm the granting of a motion to dismiss if it is sustainable on any theory or basis found in the record." R.J.S. v. Stockton, 886 N.E.2d 611, 614 (Ind. Ct. App. 2008). Although the trial court here found that Brown had standing, we limit our analysis to disagreeing with the trial court on that point. This is because standing is a fundamental, threshold issue that must be addressed before any court determines whether

[1] This is the Indiana Code Article governing quo warranto actions, although the statutes themselves do not use that phrase.

to proceed with a case.[2] See Alexander v. PSB Lending Corp., 800 N.E.2d 984, 989 (Ind. Ct. App. 2003), trans. denied. Standing focuses on whether the complaining party is the proper one to invoke the court's power. Id. It ensures that the party before the court has a substantive right to enforce the claim that is being made in the litigation. Pence v. State, 652 N.E.2d 486, 487 (Ind. 1995). If properly challenged and a plaintiff fails to establish standing in the pleadings, the court must dismiss the complaint. Alexander, 800 N.E.2d at 989.

A motion to dismiss for lack of standing is treated as a motion to dismiss under Indiana Trial Rule 12(B)(6). R.J.S., 886 N.E.2d at 614. "When reviewing a ruling on a Rule 12(B)(6) motion, we take as true all allegations upon the face of the complaint." Id. A complaint may be dismissed only if the plaintiff would not be entitled to relief under any set of facts admissible under the allegations of the complaint. Id. We review a ruling on a motion to dismiss for lack of standing de novo. See id.

Brown's amended complaint expressly listed Indiana Code Article 31-17, where the statutes governing quo warranto actions are located, as the sole basis upon which he was seeking relief. It also was captioned as an "Amended Complaint for Declaratory Judgment and Quo Warranto." App. p. 19. Indiana Code Section 34-17-1-1(6) does provide that a quo warranto information or complaint may be filed "[w]hen a corporation: (A) exceeds or abuses the authority conferred upon the corporation by law; or (B)

[2] This presumes that a party has properly raised a claim of lack of standing before the trial court; otherwise, the issue may be waived. See Burcham v. Metropolitan Bd. of Zoning Appeals Div. I of Marion County, 883 N.E.2d 204, 212 (Ind. Ct. App. 2008).

exercises authority not conferred upon it by law." Brown's assertion that the Airport Authority's operation of the flight school exceeded statutory authority would seem to fall under this provision.

Indiana Code Section 34-17-2-1, however, limits who may file a quo warranto action to the following:

> (1) by the prosecuting attorney in the circuit court of the proper county, upon the prosecuting attorney's own relation, whenever the prosecuting attorney:
>
> > (A) determines it to be the prosecuting attorney's duty to do so; or
> >
> > (B) is directed by the court of other competent authority; or
>
> (2) by any other person on the person's own relation, whenever the person claims an interest in the office, franchise, or corporation that is the subject of the information.

Traditionally, quo warranto proceedings have been brought in the name of the State, and a private person may file such an action only if he or she claims an interest on his or her own relation or a special interest beyond that of a taxpayer. City of Gary v. Johnson, 621 N.E.2d 650, 652 (Ind. Ct. App. 1993).

Here, Brown has no interest in the Airport Authority, other than as a Vigo County taxpayer. He does not fall within the category of persons statutorily authorized to file a quo warranto action. In fact, in his reply brief he did not respond to the Airport Authority's argument that he is not a proper person to file a quo warranto action.

Because Brown does not have a substantive right to enforce the quo warranto claim that is being made in this case, he lacks standing.

Brown asserts in his reply brief that even if he lacks standing to file a quo warranto action, he still has standing to seek a declaratory judgment against the Airport Authority. However, Brown did not cite the Declaratory Judgment Act, Indiana Code Chapter 34-14-1, in his amended complaint as a basis for relief, nor did he cite it before the trial court in response to the Airport Authority's motion to dismiss, or to this court in either his original or reply brief. Instead, the extent of Brown's response to the Airport Authority's motion to dismiss was to assert that he had standing under the quo warranto statutes; there was no mention of standing to seek a declaratory judgment. A party generally waives appellate review of an argument unless that party presented the argument before the trial court. Nance v. Miami Sand & Gravel, LLC, 825 N.E.2d 826, 834 (Ind. Ct. App. 2005), trans. denied. At no time, either before the trial court or this court, has Brown provided any legal analysis regarding whether he has standing under the Declaratory Judgment Act. We will not undertake to develop such an analysis for Brown. He has not established that he has standing to seek the relief he desires against the Airport Authority under either the quo warranto statutes or the Declaratory Judgment Act.

Conclusion

We affirm the dismissal of Brown's complaint on the basis that he lacked standing.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.